

Copyright protection is contemplated under the Constitution of the United States and governed by the U.S. Copyright Act. More specifically, Article 1, Section 8, Clause 8 of the United States Constitution includes “[promoting] the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries,” while the U.S. Copyright Act (17 U.S.C §102(a)) states that “[copyright] protection subsists ... in original works of authorship fixed in any tangible medium of expression.”

To qualify as original, a work must not be copied from another individual and must have at least a minimum level of creativity. The U.S. Copyright Act (17 U.S.C §101) further states that “A work is ‘fixed’ in a tangible medium of expression when its embodiment ... is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.”

Categories of copyrightable works specifically enumerated under the U.S. Copyright Act (17 U.S.C §102(a)) include literary works; musical works, including any accompanying words; dramatic works, including any accompanying music; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings; and architectural works.

Regardless of the category of copyrighted work, a copyright owner retains the right to reproduce the work; prepare derivative works; distribute copies by sale, rental, lease, or lending; perform works publicly (e.g., audiovisual works); and display works publicly (e.g., musical and artistic works) (U.S. Copyright Act 17 U.S.C §106). In addition, copyrighted works made by individuals on or after January 1, 1978 are protected for the life of the author of the work plus an additional 70 years, while works made by individuals before January 1, 1978 (and after 1923) are protected for 95 years.

Notably, all works fixed in a tangible medium are automatically copyrighted. Accordingly, while other forms of intellectual property (e.g., patents and trademarks) can require much more formal processes for acquiring protection, creating a protectable copyright is generally

much less formal, even when applying for federal registration of the work.

For more Copyright Basics, see the included slides.

**Copyright Basics, Zach Smart** from **Workman Nydegger**